

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GREGORY BARNES,

Plaintiff,

-against-

**REPORT AND
RECOMMENDATION**
CV 16-1047 (JFB)(ARL)

DR. AMY MALAVE,

Defendant.

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LINDSAY, Magistrate Judge:

Pro se Plaintiff Gregory Barnes (“Plaintiff”) brings action against defendant Amy Malave (“Defendant”) alleging violations of 42 U.S.C § 1983 stemming from an alleged denial of medical care. Before the Court, on referral from District Judge Bianco, is Defendant’s motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. For the reasons set forth below, the undersigned respectfully recommends that Defendant’s motion be denied with leave to refile.

Pursuant to Judge Bianco’s April 18, 2019 Order, Defendant was directed to file her motion for summary judgment by May 18, 2018. *Pro se* Plaintiff was directed to submit his response to Defendant’s motion by June 18, 2018 and Defendant was directed to submit her reply by July 5, 2018. Defendant filed the motion for summary judgment as directed on May 18, 2019, however Plaintiff never filed a response. On July 6, 2019, Defendant filed a letter in reply requesting that the motion be treated as unopposed. ECF No. 60. Shortly thereafter on July 11, 2019, Plaintiff submitted a letter to the Court detailing difficulties he was having in receiving his mail and informing the Court of a change of address. At that time Plaintiff, albeit belatedly, requested an extension of time to respond to the motion. ECF No. 62.

By Order dated October 9, 2019, Judge Bianco referred Defendant’s motion for summary judgment to the undersigned for a Report and Recommendation. On January 25, 2019, Plaintiff again

wrote the Court, providing another change of address, explaining his circumstances for the past six months and apologizing for his inability to respond sooner. ECF No. 64. In light of Plaintiff's *pro se* status and his repeated attempts to notify the Court of his change of address the undersigned respectfully recommends that Defendant's motion be denied with leave to refile and re-serve Plaintiff at his current address. The undersigned further recommends that Plaintiff be advised that any failure to adhere to the new deadline set for responding to the motion for summary judgment may result in the Court treating the motion as unopposed.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72 of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. Such objections shall be filed with the Clerk of the Court via ECF, except in the case of a party proceeding *pro se*. *Pro se* Plaintiff Gregory Barnes must file his objections in writing with the Clerk of the Court within the prescribed time period noted above. Any requests for an extension of time for filing objections must be directed to Judge Bianco prior to the expiration of the 14-day period for filing objections. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. § 636(b)(1); Fed R. Civ. P 72; *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchant's Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
February 6, 2019

SO ORDERED:

/s/
ARLENE ROSARIO LINDSAY
United States Magistrate Judge